

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Ace B. Freemon,	)	No. CV 09-1717-PHX-JAT (JRI)
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Charles Ryan, et al.,	)	
	)	
Defendants	)	

Plaintiff Ace B. Freemon filed a civil rights action under 42 U.S.C. § 1983 against multiple Arizona Department of Corrections (ADC) officials (Doc. 6). Before the Court are Plaintiff's Motion for Finding of Contempt for Defendants' failure to comply with a Court Order (Doc. 105) and Defendants' Motion for Summary Judgment (Doc. 119).

Both motions will be granted in part and denied in part.

**I. Background**

Plaintiff's claims concern his transfer to and confinement at the ADC Eyman Complex-Browning Unit, a supermax prison facility in Florence, Arizona (Doc. 6 at 1).<sup>1</sup> He named the following Defendants: (1) Director Charles Ryan; (2) Security Threat Group (STG) Coordinator Lieutenant George Smith; (3) STG Investigator Lisa Celaya; (4) Deputy Warden/STG Committee Member J. Freeland; (5) STG Chair Robert Patton; and STG Committee Members (6) R. Bock and (7) J. Kimble (id.).

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<sup>1</sup>Plaintiff remains housed in the Browning Unit.

1 In Count I of his First Amended Complaint, Plaintiff alleged that all Defendants  
2 violated his due process rights during the process to validate him as an STG member. He  
3 claimed that Defendants failed to provide him sufficient notice of the allegations against him  
4 and thereby denied him an opportunity to question witnesses (id. at 4-4(A)). According to  
5 Plaintiff, it is Defendants' practice to deny inmates a fair opportunity to question witnesses  
6 (id. at 4(B)). Plaintiff further claimed that the evidence used to validate him as an STG  
7 member did not satisfy the requisite evidentiary standard (id. at 4(A)). And he averred that  
8 there is no meaningful opportunity for review or reclassification and that the renouncement  
9 and debriefing options are flawed and unconstitutional and subject inmates to the risk of  
10 being labeled a snitch (id. at 4(D)-4(E)). Lastly, Plaintiff alleged that the annual review  
11 process is nothing more than a "cursory rubber stamp" of the entire process and that the Step-  
12 Down Program effectively does not exist (id. at 4(E)-4(G)).

13 In Count II, Plaintiff alleged that Ryan and Freeland violated his Eighth Amendment  
14 rights when they subjected him to conditions-of-confinement (set forth in Count I) that  
15 constituted cruel and unusual punishment, including limited food and outdoor recreation,  
16 constant lighting, and deliberate indifference to Plaintiff's medical needs stemming from a  
17 serious hand injury (id. at 5-5(B); see id. at 4(C)-4(D)). Plaintiff specifically alleged that due  
18 to his hand injury, he had been issued a Special Needs Order (SNO) that required side-cuff  
19 restraints instead of behind-the-back restraints (id. at 4(D)). Plaintiff claimed that Ryan and  
20 Freeland acted with deliberate indifference when they rescinded this SNO and forced  
21 Plaintiff to be cuffed behind his back, which exacerbates his pain (id. at 4(D), 5(B)).

22 Plaintiff later moved for and was granted preliminary injunctive relief in the form of  
23 a Court Order directing Defendants to use side-cuff restraints when cuffing or restraining  
24 Plaintiff and to allow Plaintiff to purchase a typewriter (Doc. 64).

25 In May 2011, seven months after the Court issued the injunction Order, Plaintiff filed  
26 his Motion for Finding of Contempt on the ground that Defendants and ADC staff are not  
27 using side-cuff restraints as ordered (Doc. 105). On June 15, 2011, Defendants filed their  
28 Motion for Summary Judgment on all claims (Doc. 119).

Both motions are now fully briefed. The Court first addresses Plaintiff's motion.

## **II. Plaintiff's Motion for Finding of Contempt**

### **A. Arguments**

#### **1. Plaintiff's Motion**

Plaintiff moves under Federal Rule of Civil Procedure 70 for a finding of contempt and an order to enforce Defendants and ADC officials to comply with the Court's prior Order (Doc. 105). Plaintiff submits that Defendants and ADC officials have repeatedly violated the Court's October 15, 2010 Order directing them to use side-restraints on Plaintiff during transport or any other time (id. at 1). He alleges that Defendants failed to require Browning Unit staff to obey the Court's Order (id. at 1-2). Plaintiff states that he has documented the numerous and continued violations and used the ADC grievance system to complain about this matter, to no avail (id. at 2). He further states that on April 12, 2011, he sent a letter to defense counsel to notify him of the ongoing violations and requested cooperation to help prevent future violations of the Order (id., Attach. 1). The letter documented specific instances when ADC officers violated the Order (id.).

Plaintiff alleges that ADC officials refuse to obey the Court's Order and, in doing so, they subject Plaintiff to further nerve damage and unnecessary pain and suffering by using behind-the-back restraints (id. at 2). Plaintiff explains that when he refuses to be cuffed behind the back, he is denied time out of his cell for recreation and showers (id.).

Plaintiff recounts that on May 8, 2011, Officer Morgan denied Plaintiff his scheduled recreation and shower—which are scheduled just three times a week—because Morgan refused to use side-cuff restraints, even though Plaintiff produced a copy of the Court Order to Morgan (id. at 2-3). He states that Morgan confiscated the copy of the Order and informed Plaintiff that he was on report for refusing a direct order to use behind-the-back cuffs (id. at 3).

The letter that Plaintiff sent to defense counsel referred to incidents on March 6 and April 12, 2011, when Officers Webster and Wieten refused to use side-cuff restraints and then, because Plaintiff refused behind-the-back cuffing, the officers denied Plaintiff

1 recreation and shower (id., Attach. 1).

## 2 **2. Defendants' Response**

3 Defendants acknowledge the Court's October 15, 2010 Order but assert that, as to the  
4 three incidents mentioned by Plaintiff, he mischaracterizes the actions of the officers and  
5 himself (Doc. 109 at 1-2).

6 Defendants submit a copy of Plaintiff's Individual Inmate Detention Record form for  
7 April 12, 2011, to show that Plaintiff was out of his cell from approximately 8:30 am to  
8 10:30 am for recreation, and from approximately 10:30 am to 11:00 am for a shower and  
9 shave (id., Attach. 1).

10 As to the May 8, 2011 incident, Defendants submit that Plaintiff missed recreation and  
11 showers because he refused to comply with dress standards (id. at 2). They proffer a copy  
12 of the May 8, 2011 Information Report by Morgan, which documents that Plaintiff failed to  
13 follow orders to remove and give to officers the altered/torn shirt that he was wearing (id.,  
14 Attach. 2).

15 Defendants also submit Plaintiff's Individual Inmate Detention Record for March 6,  
16 2011, which reflects that Plaintiff refused to attend recreation and showers (id., Attach. 3).  
17 Defendants state that they have not been able to determine what happened on that day;  
18 however, if he refused recreation due to a lack of side-restraints, it was a mistake (id. at 2-3).

19 Lastly, Defendants proffer the copy of a March 7, 2011 Memorandum directed to  
20 Browning Unit Staff; this Memorandum verified that as of that date, Plaintiff was on the list  
21 of inmates to be cuffed with side-restraints (id. at 3, Attach. 4).

## 22 **3. Plaintiff's Reply**

23 In reply, Plaintiff reiterates that since the Court issued its October 2010 Order, there  
24 have been numerous instances where ADC officials refused to use side-restraints, and that  
25 the occurrences are not limited to the specific dates he identified in the letter to defense  
26 counsel (Doc. 118). Plaintiff notes that Defendants admit that Plaintiff was not placed on the  
27 list for approved side-restraints until five months after the Court issued its order (id. at 2).  
28 He submits a copy of defense counsel's response to his April 12, 2011 letter. Defense

1 counsel informed Plaintiff that the issue was addressed and resolved on March 7, 2011, by  
2 adding Plaintiff to the list of inmates who are approved for modified-restraint orders (id.,  
3 Attach. 1). Plaintiff further asserts that despite the Court Order that side-restraints must be  
4 used on him during transport or any other time, the March 7 Memorandum specifically states  
5 that the side-restraint order is valid only for movement within the Browning Unit (id. at 3).

6 With respect to the specific incidents addressed by Defendants in their response,  
7 Plaintiff provides additional details about the exchange with Webster on March 6, 2011,  
8 when Webster refused to use side-restraints and denied Plaintiff his recreation and shower  
9 (id. at 4). Plaintiff also submits copies of the inmate letter and grievance documents he filed  
10 to complain about the March 6 incident (id., Attach. 2).

11 As to the events on April 12, 2011, Plaintiff reasserts that because Wieten refused to  
12 use side-restraints, he denied Plaintiff recreation and showers, and Plaintiff proffers copies  
13 of his inmate letter and grievances complaining about the incident (id. at 5, Attach. 3).  
14 Plaintiff disputes that he went out for recreation and showers as reflected on the Inmate  
15 Detention records for that day (id.). He suggests that the record may show otherwise either  
16 because Plaintiff was already scheduled for recreation and showers that day, or the  
17 documentation may have been meant for the inmate in the cell next to him but was recorded  
18 on the wrong form (id.).

19 Regarding the May 8, 2011 incident, Plaintiff denies that any exchange took place  
20 between him and Morgan about the shirt Plaintiff was wearing (id. at 7). Plaintiff realleges  
21 that Morgan refused to use side-cuffs, confiscated Plaintiff's copy of the Court Order, and  
22 denied Plaintiff's request to speak to a supervisor (id.). Plaintiff states that he learned later  
23 about the report for altered/torn clothing, for which there was no basis (id. at 7-8). Plaintiff  
24 submits a copy of the inmate property list authorizing the shirt he wore and the property  
25 receipt for the shirt, which was purchased from the ADC inmate store (id. at 8, Attachs. 5-6).  
26 Plaintiff also submits the grievance documents for this incident (id., Attach. 7). The May 20,  
27 2011 response to his inmate letter states that Plaintiff's previous grievances on this issue  
28 were still pending at the Director's level, but that Plaintiff had been moved with four other

1 side-restraint inmates to the same pod/tier so that side-restraints will always be available  
2 (id.).

3 Plaintiff describes one other incident that occurred on April 18, 2011, when Officer  
4 Belasco was passing out property and delivered an ice chest that Plaintiff had ordered (id. at  
5 6). Belasco had to cuff Plaintiff before he could receive the chest, but the officer did not  
6 have side-cuffs and, since Plaintiff would not cuff up behind the back, Belasco refused to  
7 deliver his chest (id.). Plaintiff did not receive the chest until a week later (id.). He submits  
8 copies of the grievance documents he filed about this incident (id., Attach. 4). The inmate  
9 letter response, dated May 10, 2011, informed Plaintiff that the ADC was developing an  
10 alternate storage to the wing so that side-restraints would be more available for officers in  
11 Plaintiff's area; however, the details of that plan were not yet finalized or approved (id.).

12 Finally, Plaintiff asserts that the violations continue to occur and Defendants  
13 intentionally disregard the Court's Order (id. at 8-9). Plaintiff asks that the Court issue a  
14 finding of contempt and an Order enforcing the injunction, and he requests that monetary  
15 sanctions be imposed against Defendants (id. at 9).

## 16 **B. Analysis**

17 Rule 70 provides that if a judgment requires a party to "perform any . . . specific act  
18 and the party fails to comply within the time specified, the court may order the act to be  
19 done—at the disobedient party's expense—by another person appointed by the court," or the  
20 court may hold the disobedient party in contempt. Fed. R. Civ. P. 70(a) and (e). Rule 70 is  
21 properly employed only after judgment is entered. See DeBeers Consol. Mines v. United  
22 States, 325 U.S. 212, 218 (1945); Barmat, Inc. v. United States, 159 F.R.D. 578, 582 (N.D.  
23 Ga. 1994). Therefore, to the extent that Plaintiff moves under Rule 70, his motion is denied.

24 But the Court has inherent power to enforce and require compliance with its own  
25 orders. See Aloe Vera of Am. Inc., v. United States, 376 F.3d 960, 964-965 (9th Cir. 2004).  
26 "All federal courts are vested with inherent powers enabling them to manage their cases and  
27 courtrooms effectively and to ensure obedience to their orders . . . . As a function of this  
28 power, courts can dismiss cases in their entirety, bar witnesses, award attorney's fees and

1 assess fines.” Id. (quotation omitted). Pursuant to this inherent power, the Court will grant  
2 in part Plaintiff’s request for enforcement of the prior Order.

3 The communication from defense counsel and the ADC Memorandum submitted by  
4 Defendants demonstrate that they did not make an effort to comply with the Court’s October  
5 15, 2010 Order until March 2011 (Doc. 118, Attach. 1; Doc. 109, Attach. 4). This delay is  
6 extremely troubling, as is Defendants’ apparent effort to limit the Order’s effectiveness to  
7 the Browning Unit when the court made no such limitation. Further, Plaintiff’s evidence  
8 supports a finding that even after he was added to the March 7, 2011 Memorandum, he had  
9 problems with officers trying to employ behind-the-back cuffing. The grievance responses  
10 show that as late as May 2011, the ADC was still in the process of finalizing plans that would  
11 better facilitate the use of side-restraints (see Doc. 118, Attach. 4).

12 At this juncture, the Court will deny Plaintiff’s request to impose monetary sanctions;  
13 however, Defendants are specifically directed to comply with the Court’s October 15, 2010  
14 Order. Further reports of Defendants’ failure to comply with the Order will be look upon  
15 with disfavor and monetary sanctions will be strongly considered.

### 16 **III. Summary Judgment Legal Standard**

17 A court must grant summary judgment “if the movant shows that there is no genuine  
18 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
19 Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Under  
20 summary judgment practice, the movant bears the initial responsibility of presenting the basis  
21 for its motion and identifying those portions of the record, together with affidavits, that it  
22 believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S.  
23 at 323.

24 If the movant meets its initial responsibility, the burden then shifts to the nonmovant  
25 to demonstrate the existence of a factual dispute and that the fact in contention is material,  
26 i.e., a fact that might affect the outcome of the suit under the governing law, and that the  
27 dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for  
28 the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 250 (1986) ; see Triton

1 Energy Corp. v. Square D. Co., 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need  
2 not establish a material issue of fact conclusively in its favor, First Nat’l Bank of Ariz. v.  
3 Cities Serv. Co., 391 U.S. 253, 288-89 (1968); however, it must “come forward with specific  
4 facts showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co., Ltd. v.  
5 Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal citation omitted); see Fed. R. Civ. P.  
6 56(c)(1).

7 At summary judgment, the judge’s function is not to weigh the evidence and  
8 determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477  
9 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence, and draw all  
10 inferences in the nonmovant’s favor. Id. at 255.

#### 11 **IV. Count I-Due Process**

##### 12 **A. Legal Standard**

13 The Due Process Clause of the Fourteenth Amendment prohibits the states from  
14 “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const.  
15 amend. XIV, § 1. To determine whether a procedural due process violation has occurred, a  
16 court engages in a two-step analysis. First, a court looks to whether the person possesses a  
17 constitutionally-cognizable liberty interest with which the state has interfered. Sandin v.  
18 Conner, 515 U.S. 472, 485-87 (1995). Second, if the state has interfered with a liberty  
19 interest, a court looks to whether this interference was accompanied by sufficient procedural  
20 and evidentiary safeguards. Ky. Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989).

21 It is well-settled that placement in maximum security segregation units implicates a  
22 liberty interest requiring due process protections. Wilkinson v. Austin, 545 U.S. 209, 224  
23 (2005). An inmate may be deprived of his liberty interest as long as he is accorded the  
24 proper procedural protections. For the initial decision to place an inmate in maximum  
25 custody, due process is generally satisfied by notice of the factual basis for the placement and  
26 an opportunity to be heard. Id. at 224-226; Hewitt v. Helms, 459 U.S. 460, 476 (1983),  
27 overruled in part on other grounds by Sandin, 515 U.S. 472. These procedural mechanisms  
28 serve to avoid the risk of an erroneous deprivation; “[r]equiring officials to provide a brief



1 summary of the factual basis for the classification review and allowing the inmate a rebuttal  
2 opportunity safeguards against the inmate's being mistaken for another or singled out for  
3 insufficient reason.” Wilkinson, 545 U.S. at 226.

4 After an inmate is placed in maximum security segregation, he is entitled to “some  
5 sort” of periodic review of his status. See Hewitt, 459 U.S. at 477 n. 9 (“administrative  
6 segregation may not be used as a pretext for indefinite confinement of an inmate. Prison  
7 officials must engage in some sort of periodic review of the confinement of such inmates”).  
8 To determine whether the periodic review afforded Plaintiff conforms to due process  
9 requirements, the Court must consider “[1] the private interest that will be affected by the  
10 official action; [2] the risk of an erroneous deprivation of such interest through the  
11 procedures used, and the probable value, if any, of additional or substitute procedural  
12 safeguards; and [3] the Government’s interest, including the function involved and the fiscal  
13 and administrative burdens that the additional or substitute procedural requirement would  
14 entail.” Wilkinson, 545 U.S. at 224-25 (citing Matthews v. Eldridge, 424 U.S. 319, 335  
15 (1976)).

## 16 **B. Facts/Arguments**

### 17 **1. Defendants’ Factual Assertions**

#### 18 **b. STG Validation, Renunciation/Debriefing, and Step-Down Program**

19 In support of their summary judgment motion, Defendants submit a separate  
20 Statement of Facts (DSOF), which is supported by three declarations from ADC officials and  
21 various attachments (Docs. 120, 124)

22 Defendants’ factual assertions relevant to Count I are summarized as follows:

23 In 1991, the ADC established an STG policy in an effort to control prison gang  
24 activity in Arizona’s prisons (Doc. 120, DSOF ¶ 1). The ADC has a policy that provides for  
25 the identification and certification of prison gangs and the identification and validation of  
26 inmate STG members (id. 3-4).

27 Under this policy, an STG “Suspect” is an inmate believed to be involved in an STG  
28 (id. ¶ 25). To be identified as an STG Suspect, there must be documentation of certain

1 specific criteria that is listed on the STG Worksheet; some of the criteria are self-admission,  
2 tattoos, court records, association and contacts (id. ¶ 26; Doc. 124, Uehling Decl. ¶ 33).

3 Once an inmate is identified as a Suspect, the Special Security Unit (SSU) staff  
4 initiates a “Suspect File,” which contains confidential information on the Suspect including  
5 the STG Worksheet and an STG Identifying Questionnaire (DSOF ¶ 28). If there is  
6 sufficient evidence in an inmate’s Suspect File to meet the validation criteria, the SSU staff  
7 prepares an STG Member Validation Packet (id. ¶ 31).

8 An STG Validation Committee, which is made up of three deputy wardens or  
9 associate deputy wardens, then conducts an STG Validation Hearing (id. ¶ 36). The  
10 Complex SSU Coordinator notifies the inmate of his Validation Hearing with the Hearing  
11 Notification/STG Validation form at least 10 days before the hearing so that the inmate has  
12 time to prepare a defense (id. ¶ 38). The inmate signs and dates the Hearing Notification  
13 form to acknowledge that he received it (id.). The inmate chooses whether to appear at the  
14 hearing or waive his right to appear and whether he will request witnesses; witnesses are  
15 requested using the STG Witness Request/Response form (id.). The inmate’s choices are  
16 denoted on the Hearing Notification form by checking boxes or initialing next to each choice  
17 (id.). If the inmate requests witnesses, the Complex SSU Coordinator provides the inmate  
18 the forms and, no later than five business days before the hearing, picks up the completed  
19 forms from the inmate (id.).

20 Once an inmate has been validated as a STG member through the STG validation  
21 process, the inmate may appeal the validation decision, choose to renounce his STG  
22 membership through the debriefing process, or accept his validation and not renounce his  
23 STG membership (id. ¶ 42). An inmate who refuses to renounce and debrief receives an  
24 annual review by Classification staff (id. ¶ 45). The review consists of an inquiry as to  
25 (a) whether the inmate is still associated with an STG or (b) whether the inmate has  
26 disassociated himself from the STG, renounced his gang affiliation, and is sincerely willing  
27 and able to debrief (id.). A validated inmate is considered an ongoing threat to prison  
28 security and, therefore, is segregated and assigned to be housed at the maximum-security

1 Browning Unit until the inmate is released from prison, renounces his STG membership and  
2 satisfactorily debriefs, or successfully completes the ADC Step-Down Program (SDP) (id.  
3 ¶ 47).

4 Renunciation is when a validated STG member renounces his STG affiliation (id.  
5 ¶ 49). This is followed by the debriefing process, in which an STG Unit staff member uses  
6 a STG Questionnaire to document the claim that an inmate is no longer a member of an STG  
7 (id. ¶ 50). The objectives of the debriefing process are to (1) learn enough about the  
8 validated STG member and the STG to determine whether the inmate has withdrawn from  
9 the STG, (2) provide information regarding the STG's structure and activity that would  
10 adversely impact the STG and assist in management of the STG population, and (3) provide  
11 sufficient information to determine if the inmate requires protection from other STG  
12 members or suspects (id. ¶ 51). A validated STG member who renounces membership and  
13 satisfactorily debriefs is immediately housed in Protective Segregation (PS) and is then  
14 reviewed for permanent PS status (id. ¶ 54)

15 A validated STG member can request to renounce and debrief at any time (id. ¶ 58).  
16 There is no waiting period to request to debrief, unless the inmate previously requested to  
17 debrief and failed to satisfactorily do so, in which case the inmate is not eligible to debrief  
18 again for a period of six months (id.).

19 As an alternative to the debriefing process, a validated STG member may be able to  
20 leave the Browning Unit through the Step-Down Program, which provides an inmate the  
21 opportunity to demonstrate that he is not involved in STG activity (id. ¶ 61). The Step-Down  
22 Program began in March 2006 and was substantially revised in November 2009 (id. ¶¶ 61-  
23 62).

24 Under the 2006 Step-Down Program, an inmate was not eligible to participate until  
25 he served 48 months in the Browning Unit as a validated STG member (id. ¶ 65). To make  
26 a request to participate in the Step-Down Program, the inmate must have completed a  
27 continuous 24-month period where he did not participate in any documented gang activity  
28 or have any documented incidents of assaultive behavior, extortion, or threats toward staff

1 or other inmates (id. ¶ 65). The next requirements were successful completion of a polygraph  
2 examination and a comprehensive investigation by the STG Unit (id.). The inmate must have  
3 been recommended for participation in the Step-Down Program by the Institutional Re-  
4 Classification staff, the unit Deputy Warden, or the STG Unit staff (id.). Once an inmate met  
5 these requirements, he could be evaluated for eligibility to enter the Step-Down Program at  
6 his next annual review (id. ¶ 67). The Step-Down Program had to be completed within 18  
7 months after entry into the program (id. ¶ 76). During this time, the inmate was required to  
8 avoid any STG activity or disciplinary behavior, to complete certain rehabilitation programs,  
9 and to participate in counseling and group activities (id.).

10 The ADC revamped the Step-Down Program in 2009 (id. ¶ 79). Under the current  
11 Step-Down Program policy, to participate, an inmate must have completed a continuous 24-  
12 month period absent any STG activity and make a written request to ADC staff (id. ¶ 81).  
13 There is no longer a 48-month waiting period for an inmate's initial evaluation of eligibility  
14 (see id.). The Step-Down Program must still be completed within 18 months of the date of  
15 entry into the program (id. ¶ 86). The Step-Down Program is divided into three 180-day  
16 phases and provides inmates progressively more freedom in three increments (id. ¶ 88).

#### 17 **b. Plaintiff's Validation**

18 With respect to Plaintiff's validation, Plaintiff was served with the Hearing  
19 Notification/STG Validation form, i.e., the Hearing Notice, on March 12, 2008 (id. ¶ 97).  
20 This Notice informed Plaintiff that he was suspected of being an STG member of the Aryan  
21 Brotherhood, and it explained the basis for that suspicion (id. ¶ 98). The Hearing Notice  
22 advised Plaintiff that his Validation Hearing was scheduled for March 27, 2008, at 9:00 a.m.  
23 (id.). On the Hearing Notice form, Plaintiff checked the boxes indicating that he would  
24 appear at the hearing and that he requested witnesses (id. ¶ 99).

25 The hearing was postponed until May 23, 2008, because Plaintiff was out of prison  
26 for court appearances from March 24, 2008-April 18, 2008 (id. ¶ 100).

27 Plaintiff submitted written questions to three witnesses, and the witnesses responded  
28 in writing to the questions (id. ¶ 102).

1 The hearing was held on May 23, 2008 (id. ¶ 103). Plaintiff submitted the written  
2 witness questions and answers, which the Committee reviewed along with all other evidence  
3 (id. ¶¶ 103, 105). The Committee recommended that Plaintiff be validated as an STG  
4 member, and Plaintiff opted to appeal that decision (id. ¶¶ 106-107). In his appeal, Plaintiff  
5 did not claim that the Hearing Notice was inadequate or that he was denied the ability to  
6 prepare for the hearing (id. ¶ 108). The STG Appeals Committee found that the evidence  
7 sufficiently supported the findings of the Committee, and the STG validation was upheld (id.  
8 ¶ 109).

9 To date, Plaintiff has not made a request to renounce or to debrief, nor has he made  
10 a request to participate in the Step-Down Program (id. ¶¶ 110-111).

## 11 **2. Defendants' Legal Arguments**

12 In their motion, Defendants acknowledge that Plaintiff possessed a liberty interest in  
13 avoiding transfer to the Browning Unit and, therefore, was entitled to sufficient procedural  
14 and evidentiary standards (Doc. 119 at 5). They submit that due process requires notice but  
15 that it does not require detailed written notice (id. at 6). According to Defendants, Plaintiff  
16 received written notice that set out in great detail the evidence that would be used to validate  
17 him as an STG member (id.). Defendants also state that, although there is no constitutional  
18 requirement that inmates be provided an opportunity to present witnesses at an administrative  
19 segregation hearing, here, Plaintiff was given that opportunity and submitted written answers  
20 from witnesses that he chose (id.).

21 Defendants next argue that because the validation hearing is an administrative  
22 process—not disciplinary—due process only requires a “some evidence” standard and, here,  
23 there was more than “some evidence” to support the finding that Plaintiff is a STG member  
24 (id. at 6-8). Defendants note that other courts in this district have reviewed the same  
25 validation process—in particular, the notice and hearing components—and concluded that  
26 it comports with due process (id. at 8, citing Baptisto v. Ryan, CV 03-1393-PHX-SRB, and  
27 Hampton v. Ryan, 2008 WL 2959604, at \*1 (9th Cir. Aug. 4, 2008)).

28 Similarly, Defendants contend that the annual review of Plaintiff's STG status

1 satisfies due process (id. at 8-9). They reiterate that Plaintiff may renounce and debrief at  
2 any time or he may request to enter the Step-Down Program at any time (id. at 9-10).  
3 Defendants assert that Plaintiff receives classification hearings yearly; however, he may  
4 leave the Browning Unit only if he terminates his STG-membership (id. at 10). Defendants  
5 explain that courts have approved annual reviews for inmates in supermax facilities (id. at  
6 12). And Defendants contend that when the sole reason for an inmate's supermax placement  
7 is STG membership, like Plaintiff, annual reviews are adequate given that terminating  
8 membership is the only avenue out of Browning (id. at 13).

9 Defendants maintain that there is no constitutional requirement for alternate paths to  
10 leave administrative segregation, such as the Step-Down Program, which they assert is  
11 currently available (id.). They argue that due process is satisfied with debriefing and  
12 renouncing as the sole way to exit the Browning Unit because this process satisfies the  
13 factors set forth in Matthews (id.).

14 As to Plaintiff's claim that he would be labeled a snitch if he debriefed, Defendants  
15 contend that such a claim is mere speculation, and, nonetheless, the ADC has taken steps to  
16 maximize the safety of debriefed inmates by placing them in protective segregation (id. at  
17 16-17). Further, Defendants note that Plaintiff has not debriefed or entered the Step-Down  
18 Program, so he faces no threat to his safety (id. at 17). Defendants also argue that Plaintiff's  
19 claim that he cannot debrief because he is not a gang member constitutes a backdoor attack  
20 on the validation process, which already found sufficient evidence to validate Plaintiff as an  
21 STG member (id. at 18).

22 Defendants conclude by arguing that the procedures set up to validate STG members  
23 are constitutional, and Defendants simply implemented those procedures when applying the  
24 validation process to Plaintiff (id.). They state that there is no evidence that any particular  
25 Defendant violated Plaintiff's rights in their individual roles in the validation process (id. at  
26 18-19).

27 For the above reasons, Defendants request summary judgment on Count I.

### 28 **3. Plaintiff's Response**

1 In response, Plaintiff states that he is unable to respond to Defendants' arguments on  
2 the due-process claim in Count I due to the events surrounding the transfer of the inmate who  
3 had been assisting him with writing/litigating this action (Doc. 125 at 2). In his attached  
4 declaration, Plaintiff avers that on June 14, 2011, that inmate, William Isbell, was transferred  
5 to protective segregation along with all of Plaintiff's legal paperwork and documentation,  
6 case law, and self-help books (id., Attach. 1, Pl. Decl. ¶ 1). Plaintiff states that a couple days  
7 later, ADC staff informed him that Isbell had given staff a large amount of "legal stuff,"  
8 which was sent to Phoenix to be reviewed by ADC legal staff (id.). Plaintiff avers that on  
9 June 29, 2011, he received a large stack of papers pertaining to this action; however, the  
10 papers were in complete disarray and the case law and self-help books were not returned with  
11 the papers (id.). For this reason, he states that no response can be provided to Defendants'  
12 arguments regarding notice, the annual reviews, the Step-Down Program, or debriefing (Doc.  
13 125 at 2).

#### 14 **4. Defendants' Reply**

15 Defendants note that Plaintiff moved to extend the time in which to file his response  
16 due to the lack of access to materials following Isbell's transfer, and on July 5, 2011, the  
17 Court granted Plaintiff's request and extended the response deadline to August 2, 2011 (Doc.  
18 128, citing Doc. 123). Defendants state that Plaintiff nonetheless signed and filed his  
19 response on July 12, 2011 (Doc. 128, citing Doc. 125). They submit that because Plaintiff  
20 received his paperwork back on June 29, 2011, he had more than enough time and  
21 opportunity to respond to their motion (Doc. 128 at 1-2). Defendants also note that the Court  
22 allowed him to use a typewriter when it granted his preliminary injunction request; however,  
23 he has chosen not to use a typewriter (id. at 2).

24 As to their argument for summary judgment on Count I, Defendants reassert that the  
25 identical claims about STG validation have been asserted and rejected repeatedly in this  
26 District (id., citing Hernandez v. Schriro, CV 05-2853-PHX-DGC (JJM) (Doc. 195); and  
27 Thomas v. Ryan, CV 09-1777-PHX-PGR (LOA) (Doc. 71)). Defendants further argue that  
28 Plaintiff makes no substantive argument supporting his claim in Count I; thus, summary

1 judgment should be granted (id. at 3).

2 **C. Analysis**

3 **1. Plaintiff's Asserted Inability to Respond**

4 At the outset, the Court addresses Plaintiff's claim that he was unable to adequately  
5 respond to Defendants' Count I arguments because he was denied access to his legal  
6 materials and, when they were finally returned to him, they were jumbled together and some  
7 law books were missing (Doc. 125, Attach. 1, Pl. Decl. at 1-2).

8 With their motion, Defendants submit a 50-page DSOF that is supported by 205 pages  
9 of exhibits (Doc. 120, Exs. A-C). Arguably, that number of pages jumbled and out-of-order,  
10 combined with other legal papers Plaintiff may have had, would be a burden to organize.  
11 But, as Defendants point out, although Plaintiff was given additional time to prepare his  
12 response, he chose not to use that time and instead submitted his response memorandum  
13 weeks before the filing deadline (see Doc. 125). Plaintiff presents no explanation for filing  
14 his response early and not using available time to try to organize his papers and address  
15 Defendants' arguments. Notably, Plaintiff was able to respond directly to Defendants' Count  
16 II arguments about the side-restraint policy and qualified immunity, and he even quotes from  
17 Defendants' motion (Doc. 125 at 3-4).

18 On summary judgment, the Court must determine whether there is a genuine issue as  
19 to any material *fact*; if there exist disputed *material facts*, summary judgment is not  
20 warranted. See Fed. R. Civ. P. 56(a). The summary judgment analysis therefore turns on  
21 Plaintiff's factual assertions and the evidentiary support for those assertions, not on his  
22 ability to argue legal theories. See Fed. R. Civ. P. 56(c). As such, lack of access to law  
23 books or self-help legal books does not prevent Plaintiff from responding to the factual  
24 assertions in Defendants' summary judgment motion.

25 The Court finds that Plaintiff had sufficient opportunity to respond to Defendants'  
26 motion and present facts to dispute Defendants' assertions. To the extent that he did not do  
27 that, the Court will construe Plaintiff's verified First Amended Complaint as an affidavit in  
28 response to the summary judgment motion. See Moran v. Selig, 447 F.3d 748, 760 n. 16 (9th



1 Cir. 2006) (“a verified complaint may serve as an affidavit for purposes of summary  
2 judgment if it is based on personal knowledge and if it sets forth the requisite facts with  
3 specificity”).

## 4 **2. Notice and Opportunity to Question Witnesses**

5 Plaintiff alleges that the Hearing Notice was deficient because it contained a vague  
6 description of the charges against him (Doc. 6 at 4(A)). With their motion, Defendants  
7 submit a copy of the Hearing Notice, which clearly states that Plaintiff is accused of being  
8 a member of an STG and identifies the specific evidence that supports that accusation (Doc.  
9 124, Ex. B, Attach. 4). The Notice then describes five incidents that provide evidence  
10 supporting the suspicion that Plaintiff is an STG member: (1) in 2002, SSU staff intercepted  
11 a letter and a poem authored by Plaintiff that he tried to send to an Aryan Brotherhood  
12 Suspect and that reflected Plaintiff’s loyalty to the group; (2) a 2008 property search of  
13 Plaintiff’s cell uncovered two letters, one authored by a validated Aryan Brotherhood  
14 member and the other authored by a suspected member; (3) in a 2006 search of another  
15 inmate’s property, SSU staff found cards containing inmate names and numbers of validated  
16 and suspected members of the Aryan Brotherhood, including Plaintiff’s name and inmate  
17 number; (4) in 2006, SSU staff seized two inmate letters that were addressed to Plaintiff and  
18 that discussed Aryan Brotherhood activity and business; and (5) in 2007, SSU staff  
19 discovered a membership list for the Aryan Brotherhood in another inmate’s property box,  
20 and Plaintiff’s name was on the list (id.). The description of each incident includes the exact  
21 dates and names of all inmates involved (id.). The face of the hearing Notice reflects that  
22 Plaintiff received and signed this Hearing Notice on March 12, 2008 (id.).

23 The Court finds that this Hearing Notice more than adequately set forth a “brief  
24 summary of the factual basis” for suspecting Plaintiff of STG membership, and there was  
25 sufficient information, including specific dates and named inmates who were connected to  
26 various incidents, for Plaintiff to prepare a rebuttal to the charges. See Wilkinson, 545 U.S.  
27 at 226.

28 Defendants’ evidence further shows that Plaintiff was provided the opportunity to

1 question witnesses of his choice through written questions and to submit those witness  
2 answers at his Validation Hearing (Doc. 124, Freeland Decl. ¶¶ 11, 14-15). In failing to  
3 respond, Plaintiff does not demonstrate how—in light of this evidence—he was prevented  
4 from questioning witnesses or adequately responding to the specific charges against him.

5 On the record before the Court, the Hearing Notice and procedures for questioning  
6 witnesses that were provided to Plaintiff satisfy due process.

### 7 **3. Validation Hearing**

8 Plaintiff alleges that the ADC STG policy requires that there be “clear and  
9 compelling” evidence to certify a group as an STG; however, in his hearing, Defendants used  
10 very “suspect criteria” that was subjective in nature and that did not even satisfy the “some  
11 evidence” standard (Doc. 6 at 4(A)).

12 Defendants submit a copy of the STG policy, Department Order (DO) 806 (Doc. 124,  
13 Ex. A, Attach. 1). The “clear and compelling” standard that Plaintiff refers to is the standard  
14 for determining whether a group may be certified as an STG; it does not relate to individual  
15 inmate validations (*id.*, DO 806.01 §§ 1.2, 1.2.2).

16 Inmate gang validations are subject to the “some evidence” standard. *Bruce v. Ylst*,  
17 351 F.3d 1283, 1287-88 (9th Cir. 2003). This standard sets a low bar, consistent with the  
18 recognition that assignment of inmates within prisons is “essentially a matter of  
19 administrative discretion,” subject to “minimal legal limitations.” *Id.* at 1287 (citing  
20 *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986)). A single piece of evidence may be  
21 sufficient to meet the “some evidence” requirement, if that evidence has “sufficient indicia  
22 of reliability.” *Bruce*, 351 F.3d at 1288. Courts are not required to “examine the entire  
23 record, independently assess witness credibility, or reweigh the evidence; rather, ‘the relevant  
24 question is whether there is any evidence in the record that could support the conclusion.’”  
25 *Id.* at 1287 (citing *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455-56 (1985)).

26 In his First Amended Complaint, Plaintiff addresses the evidence used against him and  
27 asserts that he did not author the membership lists that included his name, nor were those lists  
28 found in his possession (Doc. 6 at 4(A)). He also claims that what Defendants refer to as

1 “gang business” in a letter was nothing more than well wishes to another inmate (id. at 4(B)).  
2 The Court will not reweigh this evidence or make a determination on Plaintiff’s credibility.  
3 Defendants’ evidence demonstrates that they relied on two forms of written correspondence  
4 showing Plaintiff’s loyalty to the Aryan Brotherhood (see Doc. 124, Ex. B, Attach. 6). The  
5 Court finds that this was sufficient evidence to validate Plaintiff as an STG member; thus,  
6 the validation hearing and evidentiary standard applied met due process requirements.

#### 7 **4. Avenues to Exit Administrative Segregation**

##### 8 **a. Annual Reviews**

9 According to Plaintiff, the annual review process constitutes a very limited review and  
10 is little more than a “rubber stamp” of the validation process (Doc. 6 at 4(E)). Defendants  
11 maintain that the annual reviews are sufficient for inmates housed in supermax due to their  
12 STG status, as opposed to inmates housed in supermax for other reasons, in which case more  
13 frequent reviews are required (Doc. 119 at 10-13).

14 To the extent Defendants argue that annual reviews alone are sufficient to satisfy due  
15 process, their argument fails. In Hernandez v. Schriro, the Ninth Circuit reversed the district  
16 court’s finding that annual reviews did not violate due process and specifically stated that  
17 annual reviews alone are insufficient. 357 F. App’x 747, 749 (9th Cir. 2009) (citing  
18 Toussaint, 801 F.2d at 1101).

19 But Defendants’ evidence reflects that in addition to annual reviews, Plaintiff can  
20 renounce and debrief at any time (Doc. 124, Ex. A, Uehling Decl. ¶ 65). On remand in  
21 Hernandez, this Court found that annual reviews, combined with the option to debrief at any  
22 time, satisfied due process. 2011 WL 2910710, at \*8 (D. Ariz. 2011). The Court observed  
23 that no prior case had held that debriefing as the sole method of leaving administrative  
24 segregation violates due process. Id., at \*9 (citing Terflinger v. Rowland, 76 F.3d 388, at \*2  
25 (9th Cir. 1996)). And the plaintiff in Hernandez, just like Plaintiff in this case, had not  
26 requested to debrief, nor had the STG of which he was a member been decertified by ADC.  
27 See Hernandez, 2011 WL 2910710, at \*9. Consequently, there was no evidence of a risk  
28 of erroneous result in his annual review process. See id.; Matthews, 424 U.S. at 335.

1       The Hernandez Court balanced the three Matthews factors and determined that the  
2 plaintiff could not show that the process afforded him, i.e., the annual reviews with  
3 debriefing available, was inadequate. 2011 WL 2910710, at \*8-9. “Because debriefing is  
4 available at any time, the periodic review of [the plaintiff’s] status satisfies the Matthews  
5 test . . . .” Id., at \*9. Plaintiff presents nothing that causes this Court to find differently in  
6 the instant action.

7                   **b. Debriefing**

8       Plaintiff contends that debriefing creates a serious risk to an inmate’s safety because  
9 he is then identified as a snitch. The Eighth Amendment requires prison officials to protect  
10 prisoners from violence at the hands of other prisoners. Farmer v. Brennan, 511 U.S. 825,  
11 833 (1994). To establish an Eighth Amendment violation, a prisoner must first satisfy an  
12 objective requirement—he must show that he has been transferred into “conditions  
13 posing a substantial risk of serious harm.” Id. at 834. Then, he must satisfy a subjective  
14 requirement—he must show that the defendant was aware of the risk and disregarded it. Id.  
15 at 834, 837. Courts have recognized that being labeled a snitch can place an inmate at a risk  
16 of harm. See Valandingham v. Bojorquez, 866 F.2d 1135, 1138-39 (9th Cir. 1989); see also  
17 Wilkinson, 545 U.S. at 227 (“[t]estifying against, or otherwise informing on, gang activities  
18 can invite one’s own death sentence”). But it is unclear whether this same risk is present  
19 when an inmate is placed in PS as opposed to the general population. See Hernandez, 2011  
20 WL 2910710, at \*5 (distinguishing the risk of harm faced by inmates who are labeled as  
21 snitches and placed in general population with debriefed inmates who are labeled as snitches  
22 and placed in PS).

23       Regardless, even assuming that the objective prong of the deliberate indifference  
24 analysis is met when an inmate debriefs and is identified as a snitch, see Farmer, 511 U.S.  
25 at 833, Plaintiff has not satisfied the subjective prong. Defendants undisputed evidence  
26 shows that they did not disregard this risk to inmates’ safety. The evidence shows that a  
27 debriefed STG member is not housed with other inmates but is placed in PS (Doc. 124, Ex.  
28 A, Uehling Decl. ¶ 61). Plaintiff presents no argument to suggest that PS placement does not

1 provide reasonable safety to debriefed inmates following their transfer out of the Browning  
2 Unit. See Farmer, 511 U.S. at 844 (finding that a prison official who responds reasonably  
3 to a risk is not liable—even if the harm ultimately is not averted). Further, because the  
4 record shows that Plaintiff has not debriefed, he cannot show that he has faced or will face  
5 a substantial risk of serious harm in PS. See Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987)  
6 (the “mere threat” of future bodily harm to a prisoner may not provide a basis for a  
7 cognizable Eighth Amendment claim). In short, Plaintiff cannot demonstrate that debriefing  
8 is not an adequate alternative to annual reviews.

9 **c. Step-Down Program**

10 Finally, Plaintiff alleges that the Step-Down Program is not a viable alternative for  
11 leaving administrative segregation because it does not guarantee that an inmate will be  
12 released from the Browning Unit even if the inmate completes every step (Doc. 6 at 4(F)).  
13 He further alleges that after the program was stopped in 2006, it never restarted and does not  
14 exist today (id. at 4(G)).

15 An STG-validated prisoner is not entitled to an alternative means to exit  
16 administrative segregation if annual reviews and debriefing are available and satisfy due  
17 process, which is the case here. See Hernandez, 2011 WL 2910710, at \*7. Further,  
18 Defendants demonstrate that the Step-Down Program was restarted in 2009, and that Plaintiff  
19 can request to participate in the program but, to date, he has not done so (Doc. 124, Ex. A,  
20 Uehling Decl. ¶¶ 86-88; Ex. B, Freeland Decl. ¶ 20).

21 In light of the above, Defendants are entitled to summary judgment on Plaintiff’s due  
22 process claim in Count I.

23 **V. Count II-Conditions of Confinement**

24 Plaintiff’s allegations in Count II concern conditions of confinement. One of the  
25 “conditions” he complains of is medical care and the lack of accommodation for his hand  
26 injury (see Doc. 6 at 4(D), 5(B)). The Court will address the general conditions-of-  
27 confinement allegations first and then turn to the allegations specific to his hand injury.

28 Plaintiff alleges that the following conditions of his confinement violate the Eighth

1 Amendment: (1) isolation; (2) cell illumination; (4) limited recreation; (5) denial of adequate  
2 food; (6) restricted privileges; and (7) hygiene/sanitation (Doc. 6 at 4(B)-(C), 5).

3 **A. Legal Standard**

4 “[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual  
5 punishment forbidden by the Eighth Amendment.” Whitley v. Albers, 475 U.S. 312, 319  
6 (1986). “Among ‘unnecessary and wanton’ inflictions of pain are those that are totally  
7 without penological justification.” Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (citation  
8 omitted). To demonstrate that a prison official has deprived an inmate of humane conditions  
9 in violation of the Eighth Amendment, two requirements must be met—one objective and  
10 one subjective. Lopez v. Smith, 203 F.3d 1122, 1132-33 (9th Cir. 2000). First, “the prison  
11 official’s acts or omissions must deprive an inmate of the minimal civilized measure of life’s  
12 necessities.” Id. (internal citation omitted). The subjective prong requires the inmate to  
13 demonstrate that the deprivation was a product of “deliberate indifference” by prison  
14 officials. Wilson v. Seiter, 501 U.S. 294, 303 (1991). As mentioned above with regard to  
15 prison officials’ obligation under the Eighth Amendment to protect prisoners from other  
16 prisoners, deliberate indifference occurs only if a prison official “knows of and disregards  
17 an excessive risk to inmate health or safety; the official must both be aware of facts from  
18 which the inference could be drawn that a substantial risk of serious harm exists, and he must  
19 also draw the inference.” Farmer, 511 U.S. at 837.

20 **B. Isolation**

21 The Ninth Circuit has found that “administrative segregation, even in a single cell for  
22 twenty-three hours a day, is within the terms of confinement ordinarily contemplated by a  
23 sentence.” Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995) (citing  
24 Toussaint, 801 F.2d at 1091-92). Even so, the Ninth Circuit has also recognized that the  
25 harsh conditions such as those in the Browning Unit can cause psychological harm. See  
26 Miller v. Stewart, 231 F.3d 1248, 1252 (9th Cir. 2000) (in a death row case, experts stated  
27 that conditions present in [supermax placement] can cause psychological decompensation  
28 to the point of incompetency). Other courts, however, have found that standing alone, the

1 isolation inherent in segregation does not violate the Eighth Amendment. In re Long Term  
2 Admin. Segregation of Inmates Designated as Five Percenters, 174 F.3d 464, 472 (4th Cir.  
3 1999) (“the isolation inherent in administrative segregation or maximum custody is not itself  
4 constitutionally objectionable”); Jackson v. Meachum, 699 F.2d 578, 581-83 (1st Cir. 1983)  
5 (no Eighth Amendment violation by confining inmate in indefinite segregation that was  
6 otherwise satisfactory except for virtually no communication or association with other  
7 inmates, even when conditions caused depression).

8 While it is clear that something more than isolation is required to violate the Eighth  
9 Amendment, it is not exactly clear what the standard is. But the Court need not reach that  
10 question because the evidence does not show that Plaintiff is incarcerated in complete  
11 isolation.

12 Plaintiff alleges that the only socialization available is brief telephone calls and  
13 limited visitation through protective glass (Doc. 6 at 4(B)).<sup>2</sup>

14 In contrast, Defendants’ evidence shows that inmates can communicate with other  
15 inmates in their cell group, though not face-to-face (Doc. 120, DSOF ¶ 120). And, as  
16 Plaintiff acknowledges, there is visitation at the Browning Unit. Inmates are permitted a  
17 weekly two-hour block of non-contact visitation with up to four visitors at a time (id. ¶ 121).  
18 STG-validated inmates are allowed one telephone call per week (id. ¶ 122). See Keenan v.  
19 Hall, 83 F.3d 1083, 1092 (9th Cir. 1996) (prisoner telephone access is subject to reasonable  
20 security limitations) (citation omitted). In addition, inmates housed at the Browning Unit  
21 may possess soft cover books and cassette players and head phones (DSOF ¶ 123).

22 The undisputed evidence shows that Plaintiff has opportunities for limited social  
23 contact and, therefore, is not isolated to a degree that would violate the Eighth Amendment.  
24 Moreover, as discussed above, at any time Plaintiff may initiate the debriefing process, which

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25  
26 <sup>2</sup>Plaintiff states that he was unable to respond to Defendants’ specific arguments  
27 regarding isolation/social interaction, lighting, recreation, diet, and privileges because his  
28 legal paperwork was returned to him in disarray (Doc. 125 at 1-2). For the reasons set  
forth above as to Count I, the Court finds that Plaintiff had a sufficient opportunity to  
respond to Defendants’ asserted facts and arguments.

1 may allow him to transfer out of the Browning unit and its limits on social contact.  
2 Defendants will be granted summary judgment on the isolation claim.

### 3 **C. Cell Illumination**

4 The Eighth Amendment requires that inmates be given appropriate lighting. Keenan,  
5 83 F.3d at 1090. Constant illumination of a prison cell, standing alone, has been upheld as  
6 constitutional under certain circumstances. See, e.g., Warren v. Kolender, 2009 WL 196114,  
7 at \*15 (S.D. Cal., Jan. 22, 2009). But 24-hour lighting with excessively bright bulbs has  
8 been held to violate the Eighth Amendment. See Keenan, 83 F.3d at 1090–91. Thus, the  
9 inquiry into whether constant security lighting in prison cells violates the Eighth Amendment  
10 is necessarily fact-specific and often depends upon the brightness of the light at issue. For  
11 example, 24-hour lighting with single 9-watt or 13-watt bulbs has been found not to be  
12 objectively unconstitutional. Vasquez v. Frank, 290 F. App'x 927, 929 (7th Cir. Aug. 15,  
13 2008) (24-hour lighting with one 9-watt fluorescent bulb not an “extreme deprivation”);  
14 McBride v. Frank, 2009 WL 2591618, at \*5 (E.D. Wis. Aug. 21, 2009) (24-hour lighting with  
15 a 9-watt fluorescent bulb not unconstitutional); Wills v. Terhune, 404 F. Supp. 2d 1226,  
16 1230–31 (E.D. Cal. 2005) (24-hour illumination by 13-watt bulb not objectively  
17 unconstitutional); compare with Keenan, 83 F.3d at 1090-91 (24-hour lighting from “large  
18 fluorescent lights” unconstitutional where prisoner could not tell if it was night or day).

19 Plaintiff alleges that the lights cannot be turned off day or night and that he  
20 consequently suffers headaches and loss of sleep (Doc. 6 at 4(C)-(D)).

21 Defendants explain that each cell contains four light bulbs: one 40-watt fluorescent  
22 lamp “up light”; two 40-watt fluorescent lamps “down light”; and one 7-watt fluorescent  
23 night light (Doc. 120, DSOF ¶ 112). During the day, all four bulbs remain on and, at night,  
24 only the 7-watt night light remains on (id.). Defendants submit that the 7-watt security light  
25 enables staff to conduct health and welfare/security checks during the night and ensures the  
26 safety of the officers (id., Ex. C, Reyna Decl. ¶ 9).

27 In light of Plaintiff’s failure to respond to Defendants’ evidence that there is a single  
28 dimmed light at night and that this light is for security purposes, the Court finds the



1 Defendants are entitled to summary judgment on this claim.

2 **D. Recreation**

3 Exercise is a basic human necessity protected by the Eighth Amendment; thus, the  
4 deprivation of outdoor exercise for inmates who are under long-term segregation violates the  
5 Constitution. Keenan, 83 F.3d at 1089. But restricting an prisoner's exercise privileges may  
6 be reasonable if the prisoner represents a serious security risk. LeMaire v. Maass, 12 F.3d  
7 1444, 1458 (9th Cir. 1993). Five hours of exercise per week has been found to be  
8 constitutionally sufficient. See Baptisto v. Ryan, 2006 WL 798879, at \*33 (D. Ariz. March  
9 28, 2006) (collecting decisions of the Fourth, Fifth, Seventh, Eighth, Ninth, and Tenth  
10 Circuits).

11 According to Plaintiff, STG inmates are never allowed outside, and the "recreation  
12 area" is simply a 10x20 walled, concrete box with a steel grated, mesh top (Doc. 6 at 4(C)).  
13 He alleges that except for one racquetball, no exercise equipment is provided, and his only  
14 contact with the sun is an occasional glimpse through a skylight (id.).

15 Defendants proffer evidence that inmates housed in the Browning Unit receive six  
16 hours of out-of-cell recreation per week and the six hours is on three different days and two  
17 hours in duration (Doc. 120, DSOF ¶ 125). The recreation area has a cement floor and walls  
18 and a steel mesh top that allows fresh air and sunlight into the area (id. ¶ 126). Inmates may  
19 use a handball during recreation sessions, but no other equipment is allowed (id.).

20 Plaintiff does not dispute that he receives six hours of exercise per week, which is  
21 more than required. Further, the evidence shows that he gets natural light and fresh air.  
22 Plaintiff submits no evidence showing specific injury as a result of the limits on his exercise  
23 (see Doc. 6 at 4, 4(I)). On this record, Defendants are entitled to summary judgment on  
24 Plaintiff's exercise claim.

25 **E. Food**

26 "The Eighth Amendment requires only that prisoners receive food that is adequate to  
27 maintain health; it need not be tasty or aesthetically pleasing." LeMaire, 12 F.3d at 1456.  
28 "The fact that the food occasionally contains foreign objects or sometimes is served cold,

1 while unpleasant, does not amount to a constitutional deprivation.” Id. (internal citations  
2 omitted). But if an inmate is served meals with insufficient calories for long periods of time,  
3 he may be able to demonstrate a violation of his right against cruel and unusual punishment.  
4 Id.

5 Plaintiff alleges that he is served a restricted, low-calorie diet, and because he is not  
6 allowed to work, he is unable to purchase food items from the canteen (Doc. 6 at 4(C)).

7 Defendants confirm that inmates at the Browning Unit received a reduced-calorie diet  
8 due to their sedentary lifestyle (Doc. 120, DSOF ¶ 127). According to Carlos Reyna, an  
9 ADC Lieutenant and the Special Services Unit Coordinator, a nutritionist designed the diet  
10 to ensure that these low-level activity inmates receive proper calories and nutrition (id., Ex.  
11 C, Reyna Decl. ¶ 22). Reyna further explains that STG-validated inmates receive three-  
12 meals-per-day during the week and two-meals-per day on the weekends, with one hot meal  
13 each day (id. ¶ 25).

14 Plaintiff presents no specific facts or evidence to dispute Defendants’ evidence that  
15 the calories provided to him are determined by a nutritionist to meet his health needs, nor  
16 does he present any evidence that he has been injured or is underweight as a result of the diet  
17 he receives. Accordingly, summary judgment is appropriate on Plaintiff’s diet claim.

#### 18 **F. Privileges**

19 Plaintiff’s allegation that he is denied access to rehabilitation opportunities, classes,  
20 and vocational programs fails to implicate the Eighth Amendment (see Doc. 6 at 4(C)).  
21 There is no constitutional right to rehabilitation, and the lack of educational or vocational  
22 programs does not rise to a constitutional violation. Hoptowit, 682 F.2d at 1254-55. Even  
23 so, Plaintiff does not dispute that he is allowed to have limited drawing materials and he may  
24 be eligible to participate in limited in-cell education programs (DSOF ¶¶ 132-133).

#### 25 **G. Hygiene**

26 A complete denial of personal hygiene items violates the Eighth Amendment. See  
27 Keenan, 83 F.3d at 1089-91. And subjecting an inmate to lack of sanitation that is severe or  
28 prolonged can rise also to a constitutional deprivation. Anderson, 45 F.3d at 1314; see Hutto

1 v. Finney, 437 U.S. 678, 686-87 (1978). Therefore, prison officials must provide inmates  
2 with adequate sanitation. See Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000). If a  
3 prison official's refusal to provide adequate cleaning supplies prohibits inmates from  
4 maintaining minimally sanitary cells and thereby threatens their health, it amounts to a  
5 constitutional violation. See Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985).

6 Plaintiff states that he receives just three eight minute showers a week and he is denied  
7 access to mops, brooms, and cleaning solutions (Doc. 6 at 4(C)).

8 Defendants do not address Plaintiff's allegations regarding hygiene and cleaning  
9 supplies, except for asserting that Plaintiff is allowed to purchase hygiene items from the  
10 commissary (Doc. 120, DSOF ¶ 124).

11 Plaintiff's concession that he is allowed three showers a week along with evidence  
12 that he may purchase hygiene items shows that he is not denied the right to personal hygiene.  
13 Although Plaintiff alleges that he is denied mops and cleaning solutions for his cell, he does  
14 not indicate what cleaning items he is provided or whether he is completely unable to  
15 maintain sanitation in his cell, nor does he allege any injury in connection with his  
16 hygiene/cleaning-supplies claim. Defendants will therefore be granted summary judgment  
17 on this claim.

18 Because summary judgment will be granted on the due process claim and the above  
19 conditions-of-confinement claims, the Court need not address Defendants' argument for  
20 qualified immunity (see Doc. 119 at 23).

### 21 **G. Medical Care**

22 The Court now turns to Plaintiff's allegations concerning medical care for his hands.  
23 Plaintiff alleges that due to extensive wounds he suffered to both hands, and after he was  
24 diagnosed with severe nerve damage, he was issued a SNO waiver by an ADC physician that  
25 allowed him to be cuffed with side restraints instead of behind the back (Doc. 6 at 4(D),  
26 5(B)). Plaintiff alleges that Ryan and Freeland—absent any penological justification and  
27 with deliberate indifference to Plaintiff's serious medical need—rescinded all SNOs for side  
28 restraints, thereby forcing Plaintiff to endure severe pain from cuffing behind the back (id.).

## 1                                   **1. Legal Standard**

2           To prevail on this claim, Plaintiff must demonstrate that Ryan and Freeland acted with  
3 deliberate indifference to his serious medical needs. Jett v. Penner, 439 F.3d 1091, 1096 (9th  
4 Cir. 2006) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)).

5           There are two prongs to the medical deliberate-indifference analysis. First, a prisoner  
6 must show a “serious medical need.” Jett, 439 F.3d at 1096 (citations omitted). A “‘serious’  
7 medical need exists if the failure to treat a prisoner’s condition could result in further  
8 significant injury or the ‘unnecessary and wanton infliction of pain.’” McGuckin v. Smith,  
9 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.  
10 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation omitted).

11           Second, a prisoner must show that the defendant’s response to that need was  
12 deliberately indifferent. Jett, 439 F.3d at 1096. This second prong is met if the prisoner  
13 demonstrates (1) a purposeful act or failure to respond to a prisoner’s medical need and  
14 (2) harm caused by the indifference. Id. Prison officials are deliberately indifferent to a  
15 prisoner’s serious medical needs if they deny, delay, or intentionally interfere with medical  
16 treatment. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

## 17                                   **2. Facts/Arguments**

18           Defendants do not set forth any factual assertions in their DSOF that relate to this  
19 claim. In their motion, Defendants argue that there is no evidence that Ryan or Freeland  
20 were the individuals who changed the side-restraint policy or that they were aware of  
21 Plaintiff’s particular situation; thus, there is no evidence that they knew of and disregarded  
22 an excessive risk to Plaintiff’s health or safety (Doc. 119 at 22).

23           In response, Plaintiff disputes that Ryan and Freeman were not involved in the policy  
24 change or were unaware of the resulting excessive risk (Doc. 125 at 3). Plaintiff states that  
25 he grieved this issue from the Institutional Level all the way to the Central Office, where  
26 Ryan or his designee signed off on the response and admitted rescinding the SNOs for side  
27 restraints (id.). Plaintiff argues that both these Defendants signed grievances declining to  
28 remedy Plaintiff’s situation; thus, they both knew of the situation and were on notice of

1 Plaintiff's pain and suffering (id. at 3-4). Plaintiff submits copies of his grievance documents  
2 (id., Attach. 4).

3 Defendants argue in reply that denials of grievances cannot support a § 1983 claim  
4 (Doc. 128 at 4). They argue that they did not personally participate in the decision to stop  
5 side-restraints for Plaintiff; rather, they just denied his grievance and appeal, and they noted  
6 that the decision "was up to the security staff's judgment, based on a variety of factors  
7 including medical issues" (id. at 5). Defendants maintain that in addition to no evidence of  
8 personal participation, there is nothing to show that the policy at issue, which requires  
9 security staff to evaluate security implications of medical recommendations for side-  
10 restraints, is unconstitutional (id.). They nonetheless argue Plaintiff's own evidence shows  
11 the policy was put into place by Robert Patton, the Security Operations Administrator, who  
12 is not a named Defendant (id.).

### 13 **3. Analysis**

14 Defendants make no argument that Plaintiff's severe nerve damage in his hands did  
15 not constitute a serious medical need. See McGuckin, 974 F.2d at 1059-60 (examples of a  
16 serious medical need include "[t]he existence of an injury that a reasonable doctor or patient  
17 would find important and worthy of comment or treatment; the presence of a medical  
18 condition that significantly affects an individual's daily activities; or the existence of chronic  
19 and substantial pain"). Thus, the deliberate-indifference analysis turns on whether Ryan and  
20 Freeland acted with deliberate indifference to Plaintiff's serious medical need.

21 The relevant documentary evidence includes Plaintiff's December 2, 2008 Inmate  
22 Grievance Appeal, which states that despite his medical SNO waiver, he is now being cuffed  
23 behind the back pursuant to the rescission order; it is causing him severe pain and discomfort;  
24 and it amounts to deliberate indifference to his medical needs (Doc. 125, Attach. 4).  
25 Freeland responded to this Appeal on January 27, 2009; he wrote that pursuant to the  
26 Security Operations Administrator, all side-restraint SNOs have been rescinded and all  
27 inmates will now be restrained according to policy, and if there is a medical issue, Plaintiff  
28 should submit a Health Needs Request (id.).

1 Plaintiff appealed this response to the Director and received a response on March 19,  
2 2009 (id.). The response stated that his grievance was reviewed but medical practitioners  
3 will no longer issue SNOs for alternative methods of restraint (id.). The response is signed  
4 by “SK[illegible] for Charles L. Ryan, Director,” and it notes that a copy was sent to the  
5 Browning Unit Deputy Warden (id.).

6 The record also includes a copy of the response to Plaintiff’s Medical Grievance  
7 Appeal to the Director (id.). The April 22, 2009 response informs Plaintiff that “there is no  
8 longer ‘medical’ reasons for securing inmates in any particular way. Health Services staff  
9 have been directed by ADC to discontinue the practice of issuing or renewing [SNOs] for  
10 using alternative cuffing procedures . . . . Security staff have been directed to use their best  
11 judgment in restraining an inmate appropriately” (id.). The signature on the response is not  
12 legible, but it is signed “for Charles L. Ryan, Director” (id.).

13 In support of their claim that their denials of grievances cannot establish liability,  
14 Defendants rely on the reasoning in Deadmon v. Grannis (Doc. 128 at 4, citing 2009 WL  
15 2151385, at \*3 (E.D. Cal. 2009)). In Deadmon, a prisoner sued the prison’s Dietician and  
16 Chief Medical Officer, the Inmate Appeals Branch Chief, and the Appeals Examiner for the  
17 alleged failure to provide him with a doctor-ordered medical diet in violation of the Eighth  
18 Amendment. 2009 WL 2151385, at \*1. The plaintiff claimed that the Chief Medical Officer,  
19 the Appeals Branch Chief, and the Appeals Examiner violated his Eighth Amendment rights  
20 when they denied his grievance appeals. Id., at \*3. When screening the Complaint, the  
21 Court found that the plaintiff stated a claim against the Dietician but he did not allege facts  
22 showing that the other three defendants participated in the alleged deprivation, and the  
23 plaintiff did not have any substantive right in the processing of appeals. Id.

24 Defendants contend that just as in Deadmon, Plaintiff’s allegations against Ryan and  
25 Freeland are insufficient because they fail to establish personal participation in the alleged  
26 deprivation (Doc. 128 at 4-5). The Court finds, however, that Plaintiff’s allegations can be  
27 distinguished from the allegations at issue in Deadmon. There, the plaintiff “allege[d] that  
28 [the defendants’] denial of his appeal was a violation of the Eighth Amendment.” 2009 WL

1 2151385, at \*3. But in the instant action, Plaintiff specifically alleges that Ryan and Freeland  
2 were deliberately indifferent to his serious medical condition and the pain that cuffing behind  
3 the back caused him (Doc. 6 at 4(D)). Plaintiff does not claim liability based on Defendants'  
4 administrative act of denying his appeal; instead, his claim against them is based on  
5 "Freeland and Ryan declining to remedy" the ongoing problem despite knowledge of his  
6 suffering and the excessive risk of further damage (Doc. 125 at 3). In other words, Plaintiff  
7 asserts that they participated in the alleged deprivation, and the Court already determined that  
8 these allegations against Ryan and Freeland sufficiently state a claim under § 1983 (see Doc.  
9 7).

10 The Court further finds that the decision in Deadmon is not controlling, and it  
11 conflicts with a number of other cases. Specifically, in Hayes v. Dovey, 2011 WL 1157532,  
12 at \*6-7 (S.D. Cal. March 28, 2011), the defendants—two deputy wardens—argued that they  
13 could not be liable because their only role in the alleged denial of outdoor exercise was the  
14 denial of the plaintiff's administrative grievance. The district court found that the defendants  
15 did not show that, at the time the plaintiff submitted his grievance, they were powerless to  
16 provide relief to the plaintiff. Id. The district court noted that under Ninth Circuit law, the  
17 failure to act can form the basis of a § 1983 claim, and the plaintiff had sufficiently alleged  
18 that the deputy wardens were aware of the ongoing violation and could have, but failed to,  
19 alleviate his suffering. Id. (citing Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988)).  
20 Because the plaintiff alleged that the defendants knew about the claimed deprivation and  
21 "failed to address the deprivation, either by directly rejecting his [ ] grievance or by  
22 personally refusing to alleviate [ ] effects," the district court refused to dismiss the claim.  
23 Hayes, 2011 WL 1157532, at \*7.

24 In Flanory v. Bonn, 604 F.3d 249, 256 (6th Cir. 2010), the Sixth Circuit reversed the  
25 district court's dismissal of the plaintiff's Eighth Amendment claim against, among other  
26 defendants, the warden and other prison officials who denied the plaintiff's grievances  
27 complaining that he was without toothpaste. The Court found that the grievance responses  
28 demonstrated that the defendants were aware that the plaintiff was without toothpaste due

1 to the loss of his indigent status and that the only way for him to obtain toothpaste was to  
2 purchase it at the inmate store. Id. The plaintiff also established resulting harm from the  
3 deprivation—a tooth extraction and gum disease that developed as a consequence of not  
4 having toothpaste for almost a year. Id. at 255. The Court concluded that the plaintiff’s  
5 allegations that the defendants were deliberately indifferent to his hygiene needs satisfied  
6 both the objective and subjective components required for an Eighth Amendment violation.  
7 Id. at 256.

8 Under Hayes and Flanory, whether involvement in the grievance process is sufficient  
9 personal involvement to state a constitutional claim appears to depend on factors such as  
10 whether, at the time of the grievance response, the violation is ongoing and whether the  
11 respondents have authority to act to correct the problem. A plaintiff must, of course, connect  
12 the named defendant to the alleged deprivation, see Rizzo v. Goode, 423 U.S. 362 (1978),  
13 but, as noted in Hayes, liability is not limited to affirmative acts. The causation inquiry  
14 focuses on “the duties and responsibilities of each individual defendant whose acts or  
15 *omissions* are alleged to have caused a constitutional deprivation.” Leer, 844 F.2d at 633  
16 (emphasis added).

17 With the foregoing in mind, the Court addresses each individual defendant’s liability  
18 for deliberate indifference to Plaintiff’s serious medical needs.

19 **a. Ryan**

20 To establish a supervisor’s liability, a plaintiff must show facts to indicate that the  
21 supervisor defendant either: (1) personally participated in the alleged deprivation of  
22 constitutional rights; (2) knew of the violations and failed to act to prevent them; or  
23 (3) promulgated or implemented a policy “so deficient that the policy itself ‘is a repudiation  
24 of constitutional rights’ and is ‘the moving force of the constitutional violation.’” Hansen  
25 v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.  
26 1989). A supervising official is liable in his individual capacity if there is a sufficient causal  
27 connection between his wrongful conduct and the constitutional violation, which can be  
28 established if the official “knowingly refus[ed] to terminate a series of acts by others, which



1 [the supervisor] knew or reasonably should have known would cause others to inflict a  
2 constitutional injury.” Starr v. Baca, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (internal  
3 citations omitted).

4 Defendants assert that there are no allegations that Ryan had knowledge of or any  
5 involvement in Plaintiff’s situation (Doc. 128 at 4). The record shows that the “Director’s  
6 responses” to Plaintiff’s Inmate Grievance Appeal and his Medical Grievance Appeal are  
7 signed by officials other than Ryan (Doc. 125, Attach. 4). Plaintiff proffers no other specific  
8 facts or evidence to show that Ryan was personally aware of Plaintiff’s medical needs and  
9 request for side-restraints. Without any evidence of Ryan’s personal knowledge, Plaintiff  
10 cannot establish that Ryan was deliberately indifferent. See Farmer, 511 U.S. at 837.

11 To the extent that Plaintiff sues Ryan for rescinding the SNO policy and implementing  
12 a deficient policy that violated his constitutional rights, Defendants submit that the change  
13 in policy was put in place by Robert Patton, the Security Operations Administrator (Doc. 128  
14 at 5). Plaintiff presents no specific facts or evidence to connect Ryan to the policy change.  
15 Also, the record reflects that inmates are still permitted medical waivers for side-restraints  
16 (see Doc. 60, Attach. A, Griffith Decl. ¶ 1 (Browning inmate with SNO for side restraints);  
17 Doc. 109, Attach. 4 (March 2011 list of inmates approved for alternative restraints)). Thus,  
18 although the current policy is not entirely clear (see fn. 3), it does not completely bar side-  
19 restraints for inmates that require them due to physical limitations—which would raise  
20 constitutional concerns.

21 Accordingly, Ryan will be granted summary judgment on the medical-care claim.

#### 22 **b. Freeland**

23 The evidence shows that Freeland personally authored the response to Plaintiff’s  
24 Inmate Grievance Appeal (Doc. 125, Attach. 4). Thus, Freeland reviewed the appeal and was  
25 aware that Plaintiff previously had an SNO for side-restraints due to a serious medical need;  
26 that he was now being cuffed behind the back; and that he was consequently suffering  
27 significant pain and discomfort (id.). See Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir.  
28 2009) (the “primary purpose” of a grievance is “to notify the prison of a problem”). Further,

1 at the time Freeland responded to the appeal, the alleged violation was ongoing, i.e., Plaintiff  
2 was being cuffed behind the back (see Doc. 125, Attach. 4).

3 Freeland does not present any evidence with the summary judgment motion, such as  
4 a sworn statement, showing whether he had the authority to act in response to Plaintiff's  
5 complaint. As noted, the response to Plaintiff's Medical Grievance Appeal states that  
6 security staff have discretion to decide how to restrain an each inmate (Doc. 125, Attach. 4).  
7 It follows that if regular security officers can decide whether to use side-restraints,  
8 Freeland—as the deputy warden—would have authority to direct that side restraints be used  
9 on an inmate. It is Defendants' own evidence, however, that establishes Freeland's power  
10 to authorize the use of side restraints. With their opposition to Plaintiff's Motion for  
11 Preliminary Injunction, Defendants submitted evidence that under the new restraint policy  
12 initiated in September 2008, the deputy warden makes the final determination of whether to  
13 approve an inmate's request for alternative restraints (Doc. 53, Attach., Lewis Decl. ¶ 11).<sup>3</sup>  
14 Thus, Deputy Warden Freeland had authority to act to correct the on-going situation.

15 When construing all facts and inferences in Plaintiff's favor, there is a material factual  
16 dispute whether Freeland was aware of Plaintiff's serious medical need and the harm caused  
17 by behind-the-back cuffing; whether Freeland had authority to remedy the situation; and  
18 whether Freeland disregarded Plaintiff's serious medical need by failing to act. See Starr,  
19 652 F.3d at 1208 (a supervisor can be liable for his acquiescence in the violation or for  
20 conduct showing a "reckless or callous indifference to the rights of others") (citation  
21 omitted). Summary judgment will therefore be denied to Freeland on Plaintiff's medical-care  
22 claim in Count II.<sup>4</sup>

23 Although Defendants moved for summary judgment on all claims and sought  
24

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25 <sup>3</sup>In its Order granting a preliminary injunction, the Court noted that the new restraint  
26 policy was ambiguous and Defendants did not submit a copy of the policy (Doc. 64 at 13).  
27 Nonetheless, their evidence supports that the deputy warden makes the decision whether  
28 to allow an inmate to use side-restraints (Doc. 53, Attach., Lewis Decl. ¶ 11).

<sup>4</sup>Defendants expressly state that they do not seek qualified immunity on Plaintiff's  
claim related to side-restraints (Doc. 128 at 6).

1 dismissal of the First Amended Complaint “in its entirety” in their motion (Doc. 119 at 25),  
2 in their reply, Defendants ask that the First Amended Complaint be “dismissed in its entirety  
3 except for the injunctive relief side-restraints claim” (Doc. 128 at 6). However, Plaintiff  
4 sought both injunctive relief and damages (Doc. 6 at 6). Thus, with summary judgment  
5 denied to Freeland on the medical-care claim in Count II, the claims for injunctive relief and  
6 damages remain as to this claim.

7 **IT IS ORDERED:**

8 (1) The reference to the Magistrate is **withdrawn** as to Plaintiff’s Motion for Finding  
9 of Contempt (Doc. 105) and Defendants’ Motion for Summary Judgment (Doc. 119).

10 (2) Plaintiff’s Motion for Finding of Contempt (Doc. 105) is **granted in part** and  
11 **denied in part** as set forth in this Order.

12 (3) Defendants must comply with the Court’s October 15, 2010 Order directing that  
13 Defendants and ADC officials use side-cuff restraints when cuffing or restraining Plaintiff  
14 during transport or any other time.

15 (4) Defendants’ Motion for Summary Judgment (Doc. 119) is **granted in part** and  
16 **denied in part** as follows:

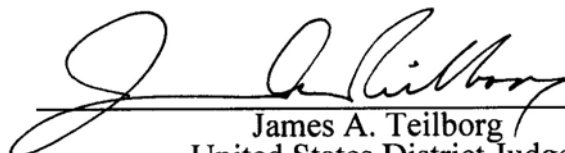
17 (a) the motion is **granted** as to Count I;

18 (b) the motion is **granted** as to the conditions-of-confinement claims in  
19 Count II;

20 (c) the motion is **denied** as to the medical-care/side-restraints claim in Count  
21 II as to Deputy Warden Freeland.

22 (5) The Clerk must dismiss Ryan, Smith, Celaya, Patton, Bock, and Kimble as  
23 Defendants.

24 DATED this 31<sup>st</sup> day of October, 2011.

25  
26  
27   
28 James A. Teilborg  
United States District Judge